

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JOSEPH WOODS,

Plaintiff,

-against-

8:18-CV-0145 (LEK/CFH)

TYSON REUCKER, *et al.*,

Defendants.

ORDER

I. INTRODUCTION

This matter comes before the Court following a report-recommendation filed on October 2, 2018, by the Honorable Christian F. Hummel, U.S. Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3. Dkt. No. 12 (“Report-Recommendation”). Plaintiff Joseph Woods filed objections. Dkt. No. 13 (“Objections”).¹

II. LEGAL STANDARD

Within fourteen days after a party has been served with a copy of a magistrate judge’s report-recommendation, the party “may serve and file specific, written objections to the proposed findings and recommendations.” Fed. R. Civ. P. 72(b); L.R. 72.1(c). If objections are timely filed, a court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” § 636(b).

However, if no objections are made, or if an objection is general, conclusory, perfunctory, or a

¹ Although Plaintiff’s Objections are dated October 12, 2018, they were not filed with the Court until October 18, 2018, outside the fourteen day window provided by § 636 (b)(1) (which expired October 16, 2018). Nonetheless, bearing in mind the leniency properly shown to pro se litigants, the Court will treat the Objections as if they had been timely filed as of the date listed therein.

mere reiteration of an argument made to the magistrate judge, a district court need review that aspect of a report-recommendation only for clear error. Barnes v. Prack, No. 11-CV-857, 2013 WL 1121353, at *1 (N.D.N.Y. Mar. 18, 2013); Farid v. Bouey, 554 F. Supp. 2d 301, 306–07, 306 n.2 (N.D.N.Y. 2008), abrogated on other grounds by Widomski v. State Univ. of N.Y. at Orange, 748 F.3d 471 (2d Cir. 2014); see also Machicote v. Ercole, No. 06-CV-13320, 2011 WL 3809920, at *2 (S.D.N.Y. Aug. 25, 2011) (“[E]ven a *pro se* party’s objections to a Report and Recommendation must be specific and clearly aimed at particular findings in the magistrate’s proposal, such that no party be allowed a second bite at the apple by simply relitigating a prior argument.”). “A [district] judge . . . may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” § 636(b).

III. DISCUSSION

Judge Hummel’s Report-Recommendation endorsed dismissal of this action, given Plaintiff’s failure in either his initial complaint, Dkt. No. 1 (“Complaint”), or his first amended complaint, Dkt. No. 11 (“FAC”), to specify “whether all criminal charges resulting from [Plaintiff’s] March 9, 2015 search and arrest have been dismissed, overturned, or otherwise invalidated,” R. & R. at 4, as required by Heck v. Humphrey, 512 U.S. 477 (1994). However, Judge Hummel also recommended “that [P]laintiff be provided a final opportunity to amend his [C]omplaint to clarify th[o]se facts.” R. & R. at 4.

Plaintiff’s Objections purportedly oppose Judge Hummel’s Report-Recommendation on the grounds that Plaintiff now has “documentary proof” that he plans to submit “in [an] amended complaint . . . [that] will cure all ambiguities [and] allow the Court to go forward with this action.” Objs. at 1. Indeed, the day after his Objections were docketed, Plaintiff filed his second

amended complaint with the Court. Dkt. No. 4 (“SAC”). However, the Report-Recommendation explicitly contemplates the possibility that Plaintiff could submit such a filing. Therefore, the Court interprets Plaintiff’s Objections not as opposing Judge Hummel’s findings, but rather as stating Plaintiff’s intention to comply with his recommended order.

Because no other objections were timely filed, the Court has reviewed the Report-Recommendation for clear error and has found none.

IV. CONCLUSION

Accordingly, it is hereby:

ORDERED, that the Report-Recommendation (Dkt. No. 12) is **APPROVED and ADOPTED in its entirety**; and it is further

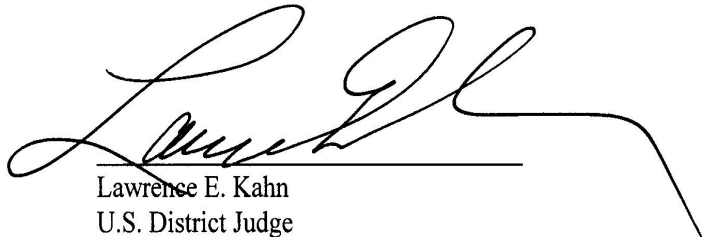
ORDERED, that Plaintiff’s FAC (Dkt. No. 11) is **DISMISSED in its entirety without prejudice**; and it is further

ORDERED, that Plaintiff’s SAC (Dkt. No. 14) is hereby **REFERRED** to the Honorable Christian F. Hummel, U.S. Magistrate Judge, for initial review pursuant to 28 U.S.C. § 1915(e); and it is further

ORDERED, that the Clerk of the Court serve a copy of this Order on all parties in accordance with the Local Rules.

IT IS SO ORDERED.

DATED: November 01, 2018
Albany, New York



Lawrence E. Kahn
U.S. District Judge